

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

IN RE:

CASE NO. 14-11771-TMD

NESANET G. BELAY

DEBTOR

CHAPTER 13

**DEBTOR'S OBJECTION TO THE SECURED CLAIM OF
WELLS FARGO BANK, N.A. (CLAIM NO. 4 PER PACER)**

This pleading requests relief that may be adverse to your interests.

If no timely response is filed within twenty-one (21) days from the date of service, no hearing will be held and the relief requested in the motion will be granted without a hearing being held. A timely response is necessary for a hearing to be held.

TO THE HONORABLE TONY M. DAVIS, U. S. BANKRUPTCY JUDGE:

COMES NOW Nesanet G. Belay, Debtor ("Debtor"), the debtor in the above referenced case, and files her *Objection to the Secured Claim of WELLS FARGO BANK, N.A. (Claim No. 4 per PACER)*, and would respectfully show the Court as follows:

I.

On April 7, 2015, WELLS FARGO BANK, N.A. ("Claimant"), filed its secured claim, claim no. 4 per PACER, in this case in the amount of \$113,020.30.

II.

Debtor objects to the claim for the reason that, based upon the documents attached to Claimant's proof of claim and the dates referenced by Claimant in the proof of claim, it appears that Debtor is not personally liable to the Claimant, Claimant is limited to collection of the debt via foreclosure, and the statute of limitations has expired on the collection of this debt pursuant to Texas Civil Practice and Remedies Code § 16.035.

Specifically, paragraph numbered 10 of the document titled "Adjustable Rate Mortgage Note", which is

attached to Claimant's proof of claim, specifies that "This Note is given without personal liability against each owner of the Property and the spouse of each owner" Accordingly, Claimant has the right to collect by foreclosure of the real property described in the proof of claim only, absent proof of actual fraud by the Debtor, according to the documents Claimant has filed with its proof of claim.

Further, the Texas Civil Practice and Remedies Code Section 16.035(d) provides that, "On the expiration of the four-year limitations period, the real property lien and a power of sale to enforce the real property lien become void."

III.

Debtor objects to the claim for the reason that, based upon the documents attached by the Claimant to the proof of claim, it appears that the claim has not been perfected as there is no notary seal authenticating the signatures on the Texas Equity Deed of Trust purportedly supporting Claimant's proof of claim.

WHEREFORE, PREMISES CONSIDERED, Debtor prays that the claim of WELLS FARGO BANK, N.A., in the amount of \$113,020.30 be disallowed as both a secured and unsecured claim against the estate in its entirety.

Respectfully submitted,

/s/ Luis Manuel Paredes Jr.

Luis Manuel Paredes Jr.

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Attorney for Debtor

*Proposed order attached as exhibit

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Certificate of Service

I, Luis Manuel Paredes Jr., certify that a true and correct copy of the Debtor's Objection to the Secured Claim of WELLS FARGO BANK, N.A. (Claim No. 4 per PACER) has been mailed by US Mail (unless otherwise noted below) to the Chapter 13 Trustee, the U.S. Trustee, and all creditors at the addresses listed below on or about May 29, 2015.

NESANET G. BELAY
15352 ENGLISH RIVER LOOP
LEANDER, TX 78641

MIDLAND FUNDING, LLC
C/O MIDLAND CREDIT
MANAGEMENT INC
PO BOX 2011
WARREN, MI 48090

MCCREARY VESELKA BRAGG
ALLEN
PO BOX 1269
ROUND ROCK, TX 78680

BARRETT DAFFIN FRAPPIER
TURNER & ENGELLLP
15000 SURVEYOR BLVD
SUITE 100
ADDISON, TX 75001

U.S. TRUSTEE
903 SAN JACINTO
SUITE 230
AUSTIN, TX 78701
(SERVED ELECTRONICALLY)

DEBORAH B. LANGEHENNIG
3801 S CAPITAL OF TEXAS HWY
SUITE 320
AUSTIN, TX 78704-6640
(SERVED ELECTRONICALLY)

NATIONSTAR MORTGAGE,
LLC
ATTN: BANKRUPTCY
DEPARTMENT
PO BOX 619096
DALAS, TX 75261-9741

WEINSTEIN & RILEY BK
SERVICES
2001 WESTERN AVE. #400
SEATTLE, WA 98121

Respectfully submitted,

/s/ Luis Manuel Paredes Jr.

Luis Manuel Paredes Jr.
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Attorney for Debtor

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
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IN RE:

CASE NO. 14-11771-TMD

NESANET G. BELAY

DEBTOR

CHAPTER 13

**ORDER GRANTING DEBTOR'S OBJECTION TO THE SECURED CLAIM OF
WELLS FARGO BANK, N.A. (CLAIM NO. 4 PER PACER)**

On this date came to be considered the *Debtor's Objection to the Secured Claim of Wells Fargo Bank, N.A. (Claim no. 4 per PACER)*, and it appearing to the Court that said claim should be disposed of as follows, it is therefore

ORDERED that the Debtor's objection is hereby granted, and it is further

ORDERED that the secured claim of WELLS FARGO BANK, N.A., filed on April 7, 2015, in the amount of \$113,020.30 be disallowed as both a secured and unsecured claim against the estate in its entirety.

ORDERED that a copy of this order will be served by the clerk's office upon the claimant, WELLS FARGO BANK, N.A., C/O BARRETT DAFFIN FRAPPIER TURNER & ENGEL LLP 15000 SURVEYOR BLVD, SUITE 100, ADDISON, TX 75001.

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Order Prepared By:

/s/ Luis Manuel Paredes Jr.

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